

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2130 OF 2005

IN

SUIT NO.2028 OF 2005

1. Mr.Kishandas Bhagwandas Nagpal & another. ... Plaintiffs.

vs.

1. M/s.Karamchand Thadaram & others. ...Defendants

Mr.P.N.Modi i/b. N.C.Dalal & Co., for Plaintiffs.

Mr.Sanjay Jain i/b. Ranjit Dharmadhikari, for Defendant no.3.

Mr.Ajay Fernandes i/b. Bilawala & Co., for Defendant no.5.

Mr.B.R.Jhaveri, for Defendant no.6.

Mr.B.B.Saraf i/b. Kishor Thakordas & Co., for Defendant no.13.

CORAM: D.K.DESHMUKH,J.

DATED: 9th March, 2007

P.C.:-

1. This is a notice of motion taken out by the plaintiffs. The learned Counsel appearing for plaintiffs states that so far as the reliefs claimed by prayer clause (a) to (e) are concerned, it is not necessary for

this Court to grant any relief in terms of those prayers because of the order passed by the Division Bench in the Appeal no.1018 of 2005 dated 28.11.2005. The learned Counsel further submits that the plaintiffs should be permitted to withdraw the relief claimed by prayer clause (f) with liberty to take out a fresh notice of motion for that relief if the plaintiffs consider that seeking relief in that terms is necessary in future. The request was opposed on behalf of the defendant no.3 and therefore, I heard the learned Counsel appearing for plaintiffs and defendant no.3 in detail on the relief claimed by prayer clause (f).

2. Perusal of the plaint shows that the plaintiffs are seeking a decree of declaration that the defendant no.1 and the defendant no.2 firms are subsisting and the plaintiff is also claiming some ancillary reliefs. The plaintiff by prayer clause (f) prays for a direction to the defendant nos. 3 to 7 to render true, full and complete accounts of the first and second defendant partnership firms. According to the third defendant, so far as the first defendant firm is concerned viz. M/s.Karamchand Thadaram, the firm has been dissolved and does not exist for any purpose and therefore, there is no question of the plaintiffs seeking accounts in relation to that firm. It is also submitted that the plaintiffs themselves are the signatories to the document dated 26.7.1971 whereby the defendant no.1 firm was dissolved. The plaintiffs have suppressed that document and therefore, they are not

entitled to any relief. It is further submitted that so far as the second defendant firm is concerned, it also stands dissolved because of the dissolution notice given by the partners and thereafter the partners of the second defendant firm continued to function only as the association and therefore, accounts cannot be called.

3. I have heard the learned Counsel appearing for both the sides at length on this issue. Perusal of the document dated 26.7.1971 relied on by the defendant no.3 thus shows that the first defendant firm was dissolved with effect from 22.11.1970 and that the accounts of the partnership were made upto 22.11.1970. But perusal of the letter of the third defendant dated 31.5.2005 shows that the document of dissolution of the first defendant firm was not actually acted upon because the first defendant firm continued to be a tenant of the premises and rent continued to be paid on behalf of the firm to the landlord. Despite the deed relied on by the third defendant, the parties including the third defendant continued to function as partners of the first defendant firm which is established by the document at "Exhibit N" which is a declaration given among others by the third defendant, whereby he has surrendered the premises as the partners of the first defendant firm. That declaration is of April, 2005. If the first defendant firm did not continue to exist and had the document relied on by the third defendant been acted upon by all the parties, there was no

question of third defendant surrendering the premises of which the first defendant was the tenant as a partner of that firm. It is, thus, clear that despite the document dated 26.7.1971, the first defendant firm continued to exist for certain purposes and therefore, the plaintiffs as the partners of that firm will be entitled to seek accounts from the third defendant who has addressed the letter dated 31.5.2005 purporting to act on behalf of the partners as also who had surrendered the premises by the declaration dated 28.4.2005 purporting to act on behalf of the partnership firm.

4. So far as defendant no.2 firm is concerned, it is clear from the letter at Exhibit D-1 dated 31.5.2005 that, according to the plaintiffs, that firm continued to exist and has not been dissolved. Even, according to the third defendant, though according to him that firm is dissolved the partners of that firm continued to be in business till April,2005 as Associates. Even, assuming the case of the third defendant in relation to the second defendant- firm that the partners of the second defendant firm were carrying on business as associates, then in any case his capacity as one of the associates, the plaintiffs would be entitled to call for the accounts of the second defendant firm which was an association run by Associates. In any case by prayer clause (f) what the plaintiffs are claiming is that the defendant nos. 3 to 7 should render true, full and complete accounts of the first and

second defendant partnership firms. In my opinion, therefore, the plaintiff is entitled to the relief claimed by prayer clause (f) but because the record discloses that it is the defendant no.3 who was only acting on behalf of both the firms that relief has to be restricted only against the defendant no.3.

5. So far as the allegations made by the third defendant that the plaintiffs are guilty of suppressing deed of dissolution dt.26.7.1971 is concerned, it is true that that document was not disclosed by the plaintiffs and the plaintiffs appear to be the parties to that document. However, in my opinion, in view of the averments made in the plaint that the plaintiffs were required to approach the Court urgently and the fact that the document was not acted upon by the parties for all purposes, in my opinion, merely because the plaintiffs did not disclose that document in the plaint, the plaintiff cannot be denied relief to which he is entitled. This notice of motion is therefore, granted in terms of prayer clause (f) as against defendant no.3 only. The defendant no.3 is granted four weeks time to furnish the accounts.

6. As observed above, the plaintiffs were not keen on pressing the relief under prayer clause (f) at this juncture and wanted to withdraw the prayer clause (f) with liberty to take out a fresh notice of motion claiming the same reliefs if the plaintiffs consider it

necessary, but because of the insistence of the third defendant, I had to hear this notice of motion. In my opinion, thus, the time of the Court which could have been saved, has been spent and therefore, the cost of this notice of motion have to be imposed on the third defendant. The third defendant is directed to pay to the plaintiffs as and by way of cost of this notice of motion Rs.25,000/- .
